

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1580 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

-----

NEW INDIA SILK MILLS

Versus

COLLECTOR OF SURAT

-----

Appearance:

Shri C.J.Vin, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

-----

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 25/07/96

ORAL JUDGEMENT

The order passed by the Collector of Surat (respondent No.1 herein) on 15th February 1983 as affirmed in revision by the order passed by the Special

Secretary, Revenue Department (respondent No.2 herein) on behalf of the State Government on 31st December 1983 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.1 ordered demolition of certain constructions styled as constructions Nos.4 to 11 alleged to have been raised by the petitioners without obtaining the necessary permission.

2. The facts giving rise to this petition move in a narrow compass. It appears that the petitioner purchased one parcel of land admeasuring 6397 square yards from the land bearing survey No.383 situated at Katargam taluka Choryasi district Surat (the disputed land for convenience) from its original owner, named, Dahyabhai Narottambhai. He had obtained what is popularly known as the N.A.Permission by the order passed on 8th September 1977. It appears that some eleven constructions were unauthorisedly raised in the disputed land. It appears that for some three constructions, the building permission from the Municipal Corporation of Surat was obtained but the permission from the office of respondent No.1 in that regard was not obtained. For the other constructions, no permission either from the local authority or from the office of respondent No.2 was taken. Thereupon, a show cause notice was issued calling upon the occupier of the disputed land to show cause why the unauthorised constructions should not be removed. By the order passed by respondent No.1 on 15th April 1978, three constructions for which the building permission was obtained from the local authority were regularised on payment of the fine of Rs.5784/- and the remaining eight constructions were ordered to be demolished. The aggrieved petitioner carried the matter in revision before the State Government. By the order passed by and on behalf of the State Government on 20th November 1978 in the revisional proceeding, the matter was remanded for ascertaining whether or not the eight constructions ordered to be demolished could be regularised by the Municipal Corporation of Surat. It appears that the petitioner was given an opportunity to get the no-objection certificate from the Municipal Corporation of Surat. The petitioner however could not bring such no-objection certificate. It appears that respondent No.1 thereupon obtained opinion of the local authority whether or not the constructions in question could be regularised. The Municipal Corporation of Surat by its communication of 29th September 1982 informed respondent No.1 that they could not be regularised. Thereafter, by the order passed on 31st May 1983 (communicated on 14th June 1983), respondent No.1 ordered demolition of those

eight constructions and ordered the levy of additional assessment in the sum of Rs.534.90 ps. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2. A copy of the memo of appeal is at Annexure-B to this petition. It was however treated as a revisional application under section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). By the order passed on 31st December 1983 by respondent No.2 on behalf of the State Government, the aforesaid revisional application came to be rejected. Its copy is at Annexure-C to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in revision by the order at Annexure-C to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary objection against maintainability of this petition under Article 227 of the Constitution of India. Thereupon, learned Advocate Shri Vin for the petitioner has orally prayed for treating this petition as also under Article 226 of the Constitution of India. Such oral prayer is accepted and this petition is ordered to be treated as also under Article 226 of the Constitution of India on condition of payment of the deficit court-fees, if any, within fifteen days from today.

4. Learned Advocate Shri Vin for the petitioner has alleged that, though the petitioner's representative was present on the date of hearing fixed on 15th February 1983 in the office of respondent No.1, it has been mentioned in the impugned order at Annexure-A to this petition that no one on behalf of the petitioner remained present on that day. Learned Advocate Shri Vin for the petitioner has invited my attention to the averment in that regard in the memo of appeal and has voiced a grievance against non-examination of that contention by and on behalf of respondent No.2.

5. In this case, on behalf of respondent No.1, a reply affidavit has been filed. In para 6 thereof it has clearly been stated that no one on behalf of the petitioner was present on the date of hearing fixed on 15th February 1983. It is unfortunate that respondent No.2 has not applied his mind to this aspect of the matter though the contention in that regard is specifically taken in the memo of appeal at Annexure-B to this petition.

6. Ordinarily, I would have branded the order at Annexure-C to this petition as suffering from the vice of non-application of mind on the part of its author and remanded the matter to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law. I have however not chosen to do so for certain reasons set out hereinbelow.

7. It may be noted that the petitioner was supposed to produce the no-objection certificate from the Municipal Corporation of Surat regarding regularisation of the remaining eight constructions ordered to be demolished. It is not in dispute that the petitioner never produced such no-objection certificate. Respondent No.1 himself thereupon sought opinion of the local authority and in reply by its communication of 29th September 1982 the Municipal Corporation of Surat informed respondent No.1 that those eight constructions could not be regularised. In that view of the matter, no useful purpose will be served by upsetting the order at Annexure-C to this petition and remanding the matter to respondent No.2.

8. It transpires from the record that the eight constructions ordered to be demolished have come into existence in an unauthorised manner. Such unauthorised constructions cannot and need not be allowed to remain in existence. In that view of the matter, the impugned order at Annexure-A to this petition as affirmed in revision by the order at Annexure-C to this petition calls for no interference by this court in this petition under Articles 226 and 227 of the Constitution of India.

9. I do not think that the grievance voiced by learned Advocate Shri Vin for the petitioner as to imposition of the fine in the sum of Rs.5784/- for regularisation of the first three constructions can be entertained. That fine was imposed by the order passed by respondent No.1 on 15th April 1978 and it was affirmed in revision by the order passed by the State Government on 20th November 1978. The matter was not carried further either before this court in writ petition or before any other appropriate forum like a litigation in the competent civil court. The order passed by and on behalf of the State Government on 20th November 1978 thus became final. The petitioner cannot be permitted to reopen that case after so many years.

10. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order

as to costs. The interim relief is vacated.

11. At the oral request of learned Advocate Shri Vin for the petitioner, the operation of this order is stayed for a period of eight weeks from today with a view to enabling the petitioner to challenge this judgment of mine by means of an appropriate proceeding before an appropriate forum. Direct Service is permitted.

#####